JURISDICTION AND STATEMENT OF FACTS.

Amici adopt and incorporate by reference the jurisdictional and factual statements set forth in the Brief for Petitioners.

AMICI CURIAE.

This brief is filed in support of the Petitioners by the community, civic and professional groups described in Appendix A hereto because of the strong belief that the voting franchise, which is a fundamental right of all citizens in a democracy, is being arbitrarily and unconstitutionally denied in this case to plaintiffs and the class of untried inmates represented by them. Written consent of all parties for the groups described in Appendix A to enter as amici and file an amicus brief in support of Petitioners has been filed with the Clerk, U. S. Supreme Court.

QUESTION PRESENTED.[1]

May a state constitutionally deprive untried inmates of a county prison of the right to register and vote in state and federal elections

(a) when they otherwise meet all the requirements of qualified electors;

(b) when they are incarcerated only because they cannot afford or are not afforded bail for their release pending trial;

(c) when others who are unconvicted, but free on bail or are convicted but free on probation or parole are permitted to register and vote under the same statutes; and

(d) when, but for the restrictions of the state statutes,[2] reasonable means of registration and absentee voting are readily available for such untried inmates?

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1. The primary concern of Amici Curiae is the ruling by the Court of Appeals on the merits that no substantial question is involved. Other jurisdictional and procedural issues are not addressed here.

2. Permanent Registration Act of March 30, 1937 P. L. 115, 25 P. S. § 623-1 et seq. (1963); Pennsylvania Election Code, Act of August 13, 1963, P. L. 707, § 1, 25 Purdon's Statutes § 2602(w)(12).

ARGUMENT.

No Compelling State Interest Exists to Support the Constitutionality of Statutes Which Deprive Untried Inmates of a County Prison of the Right to Register and Vote.

The bedrock of our system of criminal jurisprudence rests on the presumption of innocence until proven guilty. Until one accused of crime is adjudged guilty, he retains his fundamental rights of citizenship. These principles are axiomatic.

Without altering these basic tenets, our criminal justice system has developed certain practices heretofore held valid, designed to assure the attendance of accused persons for trial and submission to any sentence that may be imposed. Except for certain non-bailable offenses, all persons accused of crime have the right to be free while awaiting trial by having a court set bail which is reasonable under the circumstances and considering the severity of the crime involved. Eighth Amendment, United States Constitution. See Bail Reform Act of 1966, 18 USC, § 3146; *Stack v. Boyle,* 342 U. S. 1 (1951). Under the present system, the accident of the wealth or poverty of the accused is often determinative of whether that person will be able, as a practical matter, to afford bail and thus be free while awaiting determination of his guilt or innocence. Recently, this Court has recognized certain inherent injustices against poor people and has held that alternative punishment by imprisonment may not be imposed on a convicted person who is unable to pay a criminal fine in a lump sum because he is too poor. *Tate v. Short,* 401 U. S. 395, 91 S. Ct. 668 (1971). The bail system is not being directly attacked in the instant case—but the adverse accidental incidents of that system, at the beginning of the line before trial, are here challenged. The substantive insignificance which must be attributed to incarceration of persons while awaiting trial because they cannot afford bail, is all the more highlighted in view of the *Tate* case.

Political equality requires that everyone be permitted to vote on an equal basis—and that persons may be excluded from voting only upon a showing of compelling interest.

Accordingly, the poll tax qualifications [3] requirements that voters in school board elections be parents or property owners,[4] limiting voting on bond issues to property owners [5] and exclusions of military residents [6] have all been stricken because of the absence of any showing of compelling state interests.

From the available information, the plaintiffs involved originally were from 18 to 37 years of age, had bail set ranging from one thousand dollars ($1,000) to ten thousand dollars ($10,000),[7] and, as of the filing of the Complaint, were incarcerated for a period ranging from approximately two and one-half months to three years and seven months! What compelling interest does the state have in depriving Plaintiff Johnson, who was then 21 years old, of the right to vote because he could not afford $1,500 bail while awaiting trial? Where is the compelling state interest to justify taking away the voting franchise of Plaintiff Williams, who was detained over a year awaiting trial, because he could not afford $2,000 bail? For how long does any supposed compelling interest of the state extend to disenfranchise and prejudge 28-year-old Plaintiff Caspar, who was incarcerated for three years and seven months on a non-bailable offense and who must be legally presumed innocent until adjudged otherwise at trial? As of October, 1971, there were over 2,000 other untried inmates just like

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3. *Harper v. Virginia State Board of Elections,* 383 U. S. 663 (1966).

4. *Kramer v. Union Free School District,* 395 U. S. 621 (1969).

5. *Cipriano v. City of Houma,* 395 U. S. 701 (1969).

6. *Carrington v. Rash,* 380 U. S. 89 (1965).

7. Three of the twelve plaintiffs had non-bailable offenses charged. Since the filing of the Complaint, several plaintiffs have lost their status as class members because they have been discharged, transferred to institutions outside of Philadelphia county, convicted or acquitted. This will not, of course, render this case moot. *McDonald v. Board of Education,* 394 U. S. 802, 803 n. 1 (1969); *Goldberg v. Kelly,* 397 U. S. 254, 256 n. 2 (1970).

Johnson, and Williams, and Caspar—similarly incarcerated at the same prison. This major prison population consisting of those who cannot afford bail or have non-bailable offenses, is further aggravated by detention periods which are unduly extended because of problems of court backlogs and unavailability of witnesses which are plaguing our criminal court calendars. Such detention serves only to underscore the indignities and deprivations suffered by those who are confined while awaiting trial because they are poor in contrast to those who have bought their freedom during this interval. It is unnecessary to cut off untried prisoners from the community any more than has already happened. In a small but nevertheless tangible way, allowing them to vote would evince recognition on the part of society that they still "count."

The unconstitutionality of the statutes involved and the absence of any compelling state interest to justify disenfranchisement of the class of untried inmates is so self-evident that the Pennsylvania Attorney General, as a named defendant, stipulated to this effect in the proceedings below. This stipulation notwithstanding, and despite the lack of such stipulation on the part of the County Registration Commissioners, the trial court dismissed the Complaint for lack of subject matter jurisdiction and the Court of Appeals for the Third Circuit affirmed the dismissal on the grounds that no substantial question had been raised. Subsequently, in a 4 to 3 decision, a petition for rehearing was denied. In a vigorous dissent, Circuit Judge Adams pointed out that this case involves issues "of exceptional importance" and asserted that serious constitutional questions, unanswered by *McDonald v. Board of Election Commissioners*, 394 U. S. 802 (1969), relied on by the original panel, still exist. We agree. The deprivation of a political right so fundamental as the right to vote cannot be sanctioned on the basis of fine-line distinctions or on grounds of convenience in regulating the manner of exercising the franchise. See *Reynolds v. Sims*, 377 U. S. 533, 561-62 (1964). The mechanics of permitting prisoners to register and vote

would not be burdensome. The State now uses procedures for other citizens which could well be extended to prisoners—e.g., mail registration and voting, Permanent Registration Act of March 30, 1937, P. L. 115, 25 P. S. § 623-20 (Appendix to Brief of Petitioners), now available for the infirm and those in military service, in the merchant marine, or federal employment and their dependents.

CONCLUSION.

Amici urge this Court to reverse the decision of the United States Court of Appeals for the Third Circuit in this case and to remand the case for the empanelling of a three-judge court for a hearing as to the constitutionality of the Pennsylvania statutes and regulations thereunder which now serve to deprive untried inmates of Pennsylvania prisons of their fundamental right to exercise their voting franchise.

Respectfully submitted,

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APPENDIX A.

Amici Curiae.

AMERICAN JEWISH COMMITTEE (NATIONAL)
AMERICAN JEWISH COMMITTEE, PHILADELPHIA CHAPTER

The American Jewish Committee and its Philadelphia Chapter are well-known community organizations which have long been involved in human relations matters.

AMERICAN CIVIL LIBERTIES UNION, PENNSYLVANIA CHAPTER

The American Civil Liberties Union Foundation of Pennsylvania is a public non-profit corporation; is non-partisan; and is devoted solely to the protection and advancement of civil liberties, including the right to vote.

BARBWIRE SOCIETY

The Barbwire Society is an organization of ex-prisoners which provides needed services to prisoners, probationers and parolees.

THE COMMITTEE OF SEVENTY

The Committee of Seventy is a private non-partisan civic agency, founded in 1904. Its goal is to secure open honest elections, and to encourage an informed citizenry to exercise its franchise.

LEAGUE OF WOMEN VOTERS OF PHILADELPHIA

The League of Women Voters of Philadelphia is a local chapter of a national organization which is open to all women citizens of voting age. It is a non-partisan organization whose purpose is to encourage the informed and active participation of all citizens in government and politics.

NATIONAL EMERGENCY CIVIL LIBERTIES COMMITTEE

The National Emergency Civil Liberties Committee is a national association dedicated to the preservation of civil liberties and the Bill of Rights for all persons.

NATIONAL LAWYERS GUILD

The National Lawyers Guild is a national association of lawyers and legal workers who furnish legal advice and assistance to persons whose rights are denied and who request counsel.

PENNSYLVANIA PRISON SOCIETY

The Pennsylvania Prison Society seeks to effect improvement in correctional programs and services through public education, comprehensive planning and consultation with correctional officials.

PENNSYLVANIA PROGRAM FOR WOMEN AND GIRL OFFENDERS, INC.

The Pennsylvania Program for Women and Girl Offenders, Inc. is a non-profit independent organization engaged since 1968 in research, service and advocacy on behalf of women and girl offenders in Pennsylvania.

PHILADELPHIA URBAN COALITION, CRIMINAL JUSTICE TASK FORCE

The Philadelphia Urban Coalition, Criminal Justice Task Force is organized to provide a forum for participants at all levels of the criminal justice system to examine the impact of the criminal justice problems; to examine the attitudes and alternatives to the problems as they relate specifically to the inner-city.

PRISON RESEARCH COUNCIL OF UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

The Prison Research Council of University of Pennsylvania Law School was formed during the Summer of 1966 for the purpose of answering legal inquiries and request for information from prisoners who are unable to obtain this information from any other source.

PRISONERS' RIGHTS COUNCIL

The Prisoners' Rights Council is an organization which pursues constitutional human rights for imprisoned people.